

**CALIFORNIA COASTAL COMMISSION**

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**Th7a**

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Staff:	D.Carl
Staff report:	8/24/2000
Hearing date:	9/14/2000

**COASTAL DEVELOPMENT PERMIT APPLICATION**

**Application number.....3-00-117, Monte Foundation Fireworks**

**Applicant .....Monte Foundation**

**Project location.....Seacliff State Beach in the Aptos area of south Santa Cruz County.**

**Project description .....Close Seacliff State Beach (from 1pm to 10pm on Saturday October 14th) and the Seacliff State Beach Pier and Cement Ship (from 8am on Friday October 13th to 8am on Sunday October 15th) to allow a fee-based fair and fireworks display to benefit Santa Cruz County Schools. Includes temporary fencing, two tents, and a stage structure on the beach. (Note: the Applicant has agreed to project modifications as discussed below.)**

**File documents .....Santa Cruz County Certified Local Coastal Program (LCP).**

**Staff recommendation ....Approval with Conditions**

**Summary:** The Applicant proposes to exclusively use Seacliff State Beach in south Santa Cruz County for a fund raiser for Santa Cruz County schools. The event includes food booths, games, activities, and live music stages geared towards families. The centerpiece of the event is an evening fireworks show at 9pm. The Applicant expects approximately 30,000 people to attend the one-day event with tickets costing \$10 (children 5 and under free). As originally proposed, the general (non fee-paying) public would be prohibited from using a one-mile stretch of State beach and offshore waters for most of the day of the event (Saturday, October 14<sup>th</sup>), and would be prohibited from using other beach and water areas within that stretch (on the beach, pier, and water) from Friday to Sunday. (Through subsequent discussions with Commission Staff, the Applicant has agreed to modify these exclusion areas and times as provided in the special conditions staff is recommending that the Commission adopt in approving this permit.)

Although for a worthy cause, the proposed event would block Coastal Act-protected public access to the State Beach and State waters at Seacliff. The public would not only be precluded from using the one-mile stretch of beach, but lateral access along the coast would be blocked. Seacliff State Beach is a very popular camping and day-use Park unit that attracts over 1 million coastal visitors per year. Although State Parks currently charges a parking fee of \$6 for day-users arriving by car, there is no fee for those who walk or ride their bikes into the Park for the day. The project, as proposed, is inconsistent with the Coastal Act's access, recreation, and land use priority policies.

To ensure the public's right to access the beach and water area here consistent with the Coastal Act,



**California Coastal Commission**  
**September 2000 Meeting in Eureka**

Staff: D.Carl Approved by:  
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conditions are required that allow for only a limited closure of the beach area; lateral beach access would be maintained except for between the hours of 6pm to 10pm on Saturday (in preparation for, and during, the event's fireworks show). Safety zones (surrounding the fireworks) would be established and event signage, cleanup, and a post-event monitoring report would be required. As conditioned and agreed to by the Applicant, Staff recommends approval.

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## 1. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

**Motion.** I move that the Commission approve Coastal Development Permit Number 3-00-117 pursuant to the staff recommendation.

**Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will



result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

## 2. Conditions of Approval

### A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### B. Special Conditions



**1. Approved Project.** The Approved project consists of the Project Area, Safety Zone, and Through Public Accessway as follows:

- (a) **Project Area.** The Permittee shall be allowed to close free public access to a limited portion of the sandy beach area at Seacliff State Beach from 1pm to 10pm on Saturday October 14, 2000 only ("Project Area"). The Project Area shall be described roughly as a rectangular area extending vertically seaward from the Seacliff State Beach bulkhead to a meandering point always a minimum of ten feet inland of Monterey Bay waters, and extending laterally along Seacliff State Beach (approximately one-half mile) from a point immediately west of the sandy beach access point associated with the pedestrian bridge across Aptos Creek to a point located immediately west of the second beach stairway west of the Seacliff State Beach pier. A \$10 fee may be charged for persons over five years of age wishing to access the Project Area from 1pm until 10pm on Saturday October, 14, 2000. The Project Area may be maintained at its perimeter with see-through construction fencing no higher than 5 feet tall. Within the Project Area the Permittee is allowed to place: (a) two, twenty foot by twenty foot tents with associated fenced areas; and (b) a thirty-two foot by forty foot stage. Fencing shall not be allowed to enter into Monterey Bay waters at any time. See Exhibit C for a graphic depiction of the Project Area.
- (b) **Safety Zone.** The Permittee shall be allowed to close all access to a limited portion Seacliff State Beach, all of the Seacliff State Beach pier, and a limited area of the waters offshore surrounding the Seacliff State Beach pier from 8am to 10pm on Saturday October 14, 2000 ("Safety Zone"). The Safety Zone shall be described as a polygon straddling the Seacliff State Beach pier measuring roughly two-hundred feet along the bulkhead (i.e., entrance to pier), extending to a roughly three-hundred twenty foot width at the edge of Monterey Bay, and extending out to sea approximately one-half mile. A Through Public Accessway, as described in part (c) below, shall be provided within the Safety Zone between the hours of 8am and 6pm on Saturday October 14, 2000. Fencing shall not be allowed to enter into Monterey Bay waters at any time. See Exhibit C for a graphic depiction of the Safety Zone.
- (c) **Through Public Accessway.** The general public shall be allowed unencumbered, free access to all areas of Seacliff State Beach except for the Project Area and the Safety Zone and shall be provided a minimum ten foot wide corridor providing through access along the seaward side of the Project Area ("Through Public Accessway"). The Permittee shall ensure that the Through Public Accessway remains a minimum width of ten feet as measured inland from the tidal reach of Monterey Bay by adjusting any Project Area fencing inland as necessary throughout the course of the event. From 6pm to 10pm on Saturday October 14, 2000, the Permittee may close the Through Public Accessway to general public access and include this area in the Project Area; during this period of time, access to the Project Area shall be free for those persons five and under and may be by purchase of a \$10 ticket for all others. Signage shall be placed at either end of the Through Public Accessway describing the nature of the event, the Project Area and fees associated thereto, the Safety Zone, and the Through Public Accessway. Fencing shall not be allowed to enter into Monterey Bay waters at any time. See Exhibit C for a graphic depiction of the Through Public Accessway.



See Exhibit C for a graphic depiction of the Approved Project.

The Permittee shall ensure that the Approved Project is provided as described in this Special Condition. Any proposed changes to the Approved Project shall be reported to the Executive Director. No changes to the Approved Project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Cleanup and Restoration of Seacliff State Beach.** All event fencing located on Seacliff State Beach shall be removed by 6am on Sunday October 15, 2000. Seacliff State Beach, the Seacliff State Beach pier, and the water area surrounding Seacliff State Beach pier shall be cleared of all debris, including but not limited to all fireworks detritus, and returned to their pre-event condition by 10am on Sunday October 15, 2000.
3. **Beach Area Signs.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Sign Detail to the Executive Director for review and approval. The Sign Detail shall identify the precise language and dimensions of all signs that would be placed within the sandy beach area of Seacliff State Beach (including the sandy beach access point west of the pedestrian bridge across Aptos Creek). The Permittee shall undertake development in accordance with the approved Sign Detail.
4. **Other Agency Approval.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval evidence of all permits, permissions or approvals granted, or evidence that no permits, permissions or approvals are necessary, from: (1) California Department of Parks and Recreation; (2) Monterey Bay National Marine Sanctuary; and (3) United States Coast Guard. The Permittee shall inform the Executive Director of any changes to the project required by the any of the above-listed agencies. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is necessary.
5. **Post-Event Monitoring Report.** ON OR BEFORE JANUARY 1, 2001, the Permittee shall submit a Post-Event Monitoring Report to the Executive Director for review and approval. The Report shall, at a minimum, include: (a) a description of the event including event set-up, event itself, and event clean-up; (b) the effect of the limited closure (to Seacliff State Beach sandy beach, pier, and water area) on the public's ability to access these areas; (c) a summary of incidents (if any) with persons attempting to access the Seacliff State Beach sandy beach, pier, and/or water area during the event; (d) an estimate of the number of persons who may have accessed the beach area and stayed for the fireworks event without paying a fee and/or a donation; (e) suggestions for modifying the event in the future to address any identified concerns; and (f) a preliminary description of the proposed event at Seacliff State Beach (if any) for calendar year 2001.

The Post-Event Monitoring Report shall be submitted with evidence of California Department of Parks and Recreation review and concurrence.

6. **Future Event(s).** If the Permittee proposes a similar event at Seacliff State Beach in calendar year



2001 (or any subsequent years), the Permittee shall submit a complete, filed coastal development permit application to the Coastal Commission's Central Coast District Office no later than four months before the event date (e.g., if the proposed event is scheduled for October 14, 2001, the complete, filed application must be received by June 14, 2001). Such application may be for a multi-year period and shall include, at a minimum: (a) a detailed description of the event and all proposed event structures (text description and site plan); (b) the times (day and hour) when event structures would be installed, when different elements of the event would begin and end, and when the beach area would be restored to pre-event condition; and (c) evidence of all other approvals applied for and/or granted by California Department of Parks and Recreation, Santa Cruz County, Monterey Bay National Marine Sanctuary, U.S. Coast Guard, and any other involved agency.

### 3. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Location

The proposed temporary event would take place at Seacliff State Beach in unincorporated south Santa Cruz County. Seacliff State Beach is a unit of the State Parks system located just downcoast of Capitola that includes campsites, beach, pier, interpretive center and associated public recreational amenities open year round. The Park is entered from the blufftop above and opens onto an elevated, paved parking and day-use/campground area running along the backbeach bluffs at this location supported by a roughly 5 foot high bulkhead at its interface with the sandy beach. The approximately one-mile stretch of beach area where the project would take place is part of a roughly 15 mile unbroken stretch of beach extending from New Brighton State Beach to the Pajaro River. The Monterey Bay National Marine Sanctuary, the largest of twelve such federally protected sanctuaries nationwide, is directly offshore. See Exhibit A for project location.

For permitting purposes, it is important to note that the proposed event would take place both on the sandy beach and inland portions of the State Park. The portion of the event taking place on the elevated day-use and campground area running the length of the backbeach is located within the coastal permitting jurisdiction of Santa Cruz County (see "Other Agency Review" finding below). The portion of the project located within the sandy beach area (including the pier) seaward of the bulkhead is located within the Commission's retained coastal permit jurisdiction. The portion of the project within the Commission's jurisdiction (i.e., the sandy beach) is the portion addressed by this coastal development permit application.

#### B. Project Description

The Applicant proposes to exclusively utilize Seacliff State Beach for what the Applicant describes as a



fund raiser for Santa Cruz County schools. The event includes food booths, games, activities, and live music stages geared towards families. The centerpiece of the event is an evening fireworks show at 9pm. The Applicant expects approximately 30,000 people to attend the event. Tickets for entry cost \$10 with children 5 and under allowed in for free. The food and activity booths charge their own separate fees.

The event itself would take place on Saturday, October 14, 2000 with various set-up and takedown activities extending from Friday through Sunday. More specifically, within the Commission's jurisdiction the Applicant's original proposal would:

- Close the State Beach to general public access from 1pm to 10pm on Saturday October 14<sup>th</sup> to allow for the fundraiser; during this time frame, the non ticket-holding public would be excluded from the approximately one mile stretch of beach and water area at Seacliff. The beach and water closure would be maintained by 5 foot orange construction fencing and security guards.<sup>1</sup>
- Close the Seacliff Pier from 8am on Friday October 13<sup>th</sup> until 8am on Sunday the 15<sup>th</sup> to allow for the fireworks show to be set up. The extended closure (i.e., two days) is meant to ensure public safety from the time the explosives are delivered (i.e., Friday at 8am) until after the fireworks show and removal of explosives.
- Close a safety area surrounding the pier (because of the fireworks) including sandy beach areas up and downcoast and the areas of ocean offshore roughly within 150 feet of the pier.<sup>2</sup> The safety areas would be closed from 8am on Saturday the 14<sup>th</sup> until 10am on Sunday the 15<sup>th</sup>. These areas would be off-limits to both ticket holders as well as the general public for safety purposes. The ocean safety area would be patrolled by boat and the beach area would be marked off by 5 foot orange construction fencing. A ten foot wide corridor would be provided along the length of the safety zone adjacent to the ocean to allow passage up and downcoast under the pier.
- Place a stage (roughly 32 by 40 feet and approximately 10 feet high) on the beach downcoast of the pier (to be used for musical presentations, magician shows, cheerleader routines, etc.) and place two 20 by 20 foot tents on the beach, one upcoast and one downcoast of the pier.

See the Applicants proposed site plan, Exhibit B.

In general, the majority of the daytime activities would take place in the Seacliff day-use area (above the beach bulkhead) with the beach area within the project area used for general beach use by ticket holders. The two tents on the beach would be used for various functions during the event and the stage would include an area of seating for event-goers to watch stage shows. As the fireworks event approaches, the Applicant expects ticket holders to take up places on the sand to watch the fireworks show.

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<sup>1</sup> In personal communication with Staff (on August 22, 2000), the Applicant has indicated an ability, and a willingness, to use less of the beach and provide a through public access corridor along the event for a portion of the day (from 1pm to 6pm).

<sup>2</sup> The Applicant has indicated that the water area closure would extend seaward roughly one-half mile to meet Coast Guard safety requirements.



The Applicant indicates that the general public would be allowed back into Seacliff State Beach after the fireworks show at 10pm on Saturday. Since Seacliff State Beach closes for day-use at 10pm, this means that the public would be unable to access the beach until 6am the next day (Sunday). According to the Applicant, all beach area fencing would be rolled up at the completion of the fireworks event on Saturday and completely removed by 10am on Sunday the 15<sup>th</sup>.

## C. Other Agency Review

### 1. State Parks

In past years, State Parks has issued the Applicant a Special Event Permit for the use of Seacliff State Beach. As of the date of this staff report, this Permit has not yet been granted. State Parks is continuing to work with the Applicant and indicates that Parks is interested in seeing the results of the Coastal Commission's review before finalizing its own permit. There is little reason to believe that the permit will not be issued for the event this year. This approval is conditioned for evidence of State Parks approval (see Special Condition 4).

### 2. Santa Cruz County

The project would take place within Seacliff State Park and Beach in the unincorporated area of south Santa Cruz County. As detailed earlier, the portion of the project landward of the sandy beach at this location is located within the County's coastal permitting jurisdiction. From what Commission staff understand, Santa Cruz County determined that the proposed event meets all Santa Cruz County zoning requirements and that no County permits are necessary for the proposed project (other than perhaps an encroachment permit for closing County roads). The County did not require any type of CEQA document for the proposed project.

### 3. Monterey Bay National Marine Sanctuary

The project would take place at least partially within the Monterey Bay National Marine Sanctuary. As of the date of this staff report, the Sanctuary has not signed-off on the event but has in the past. This approval is conditioned for evidence of Sanctuary approval (see Special Condition 4).

### 4. U.S. Coast Guard

The project temporarily would impact the ability of boaters to utilize Bay waters and the Applicant indicates that it has asked for permission from the U.S. Coast Guard. As of the date of this staff report, the Coast Guard has not signed-off on the event but has in the past. This approval is conditioned for evidence of Coast Guard approval (see Special Condition 4).





## D. Standard of Review

The portion of the proposed development that is the subject of this coastal development permit application is located within the Coastal Commission's retained coastal permitting jurisdiction. Because of this, the County's certified LCP can provide non-binding guidance, but the standard of review for the proposed coastal development permit is the Coastal Act.

## E. Coastal Development Permit Determination

### 1. Public Access and Recreation

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road on the beach. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

**30210:** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

**30211:** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

**30212(a):** *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

**30213:** *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...*

**30220:** *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

**30221:** *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*



**30223:** *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30240(b) also protects parks and recreation areas such as Seacliff State Beach. Section 30240(b) states:

**Section 30240(b).** *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The proposed event would take place on an approximately one-mile stretch of Seacliff State Beach between Potbelly Beach and New Brighton State Beach (upcoast) and Aptos Creek (downcoast) along the shores of Monterey Bay. This beach area where the project would take place is part of a roughly 15 mile unbroken stretch of beach extending from New Brighton State Beach to the Pajaro River. The Monterey Bay National Marine Sanctuary is offshore. See Exhibit A.

The event as proposed would prohibit the general public from using the majority of Seacliff State Beach and the offshore waters from 1pm until 10pm on Saturday October 14<sup>th</sup>; during this time, only persons with event tickets would be allowed in that area.<sup>3</sup> The event would prohibit the general public from using Seacliff State Beach pier from 8am on Friday October 13<sup>th</sup> until 8am on Sunday October 15<sup>th</sup>. The event would prohibit all persons (with tickets and without) from the “safety zone” on the beach and in the water area surrounding the pier from 8am on Saturday the 14<sup>th</sup> until 10am on Sunday the 15<sup>th</sup>. During set-up and clean-up activities (extending from the morning of Friday the 13<sup>th</sup> until the morning of Sunday the 15<sup>th</sup>), general public access, where not otherwise excluded, would be adversely affected by noise and other interference from set-up crews and materials.

Usually, the affected public beach and water recreational area is available to overnight RV and day-use visitors through the main park entrance (from State Park Drive and Highway One) as well as to visitors walking to the affected beach area from upcoast New Brighton State Beach and Potbelly Beach and from the downcoast Esplanade/Beach Drive area of Aptos. At least partially because of the wide nature of the beach and its unbroken length along the shores of Monterey Bay, the subject beach area is very popular as a lateral walking beach. Approximately 1 million visitors per year use Seacliff State Beach, and State Parks indicates that the 26 campsites here are some of the most popular in the state. State Parks currently charges a parking fee of \$6 for day-users arriving by car;<sup>4</sup> there is no fee for those who walk or ride their bikes into the Park for the day. The Park is open from 6am to 10pm.

The Applicant proposes to charge a \$10 fee, 5 and under free, for the public to gain access to this public beach recreational area during the event. Separate fees would be required for the food and activity booths

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<sup>3</sup> As described earlier and outlined in the Special Conditions, the Applicant has indicated an ability and willingness to use less of the beach (about one-half mile) and provide a through public access corridor along the event for a major portion of the day (from 1pm to 6pm) (personal communication with Staff, August 22, 2000).

<sup>4</sup> According to State Parks, this fee at Seacliff State Beach will be reduced to \$3 on January 1, 2001.



that would line the elevated paved area above the beach.

The Coastal Act specifically protects recreational beach and offshore public access here. The Coastal Act requires maximization of public access (30210) and does not allow development to interfere with the public's right to use this stretch of beach (30211). The Act requires protection of low cost recreational facilities such as the State Park (30213) and requires that the State beach and waters here be protected for recreational uses (30220 and 30221).

The project as originally proposed is inconsistent with the Coastal Act's public access and recreation policies because it:

- reduces public access and recreational opportunity contrary to the requirements of Coastal Act Section 30210; the affected public beach, pier, and water area would not be available for free public access as is normally the case;
- interferes with the public's right of access to the beach and bay at this location contrary to the requirements of Coastal Act Section 30211;
- fails to provide lateral public access contrary to the requirements of Coastal Act Section 30212; the beach blockage would force lateral access to circumvent the project inland (what was a one mile walk along the beach would become a roughly 4 mile circuitous route along local streets to get back down to the beach on the other side of the event); even if a through corridor is maintained until 6pm the day of the event (as the Applicant has indicated a willingness to do)<sup>5</sup>, lateral access would still be blocked from 6pm until 10pm;
- fails to protect the lower cost Seacliff State Beach visitor recreational facilities contrary to the requirements of Coastal Act Section 30213; a \$10 fee for access does not represent a low cost activity, particularly since day-use of the public beach here is currently provided free of charge;
- prohibits access to offshore water-oriented recreational area contrary to the requirements of Coastal Act Section 30220; again, this impact would be reduced (but not eliminated) if the 6pm until 10pm through access corridor were maintained along the seaward edge of the event (as the Applicant has indicated a willingness to do);<sup>6</sup>
- significantly impacts the ability of the public to access, enjoy, and use Seacliff State Beach as well as adjacent upcoast (New Brighton State Beach and Potbelly Beach) and downcoast (Seacliff downcoast of Aptos Creek) beaches by introducing 30,000 persons into the affected beach area contrary to Coastal Act Section 30240(b).

In light of the Coastal Act access and recreation inconsistencies, and in order to ensure that the public is not unduly precluded from access to the State Beach for the duration of the proposed event, the Commission finds that the Applicant's proposed project does not adequately protect public access. The Commission is supportive of an event designed to raise funds for area schools, but such an event must be

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<sup>5</sup> Personal communication with Staff August 22, 2000.

<sup>6</sup> Ibid.



mindful of the public's ability to access the coast here. Although the Commission is willing to allow certain public access prohibitions to ensure public safety pursuant to Section 30212(a)(1), the complete closure of this stretch of beach to the public to allow a fee-based event to take place on State Beach is not consistent with Coastal Act policies.

One obvious option to address Coastal Act inconsistencies would be to allow free access to the beach area but allow the Applicant to charge a fee for access to the elevated promenade above the beach (where the overwhelming majority of the event would take place).<sup>7</sup> The Applicant could encourage, but not require, a donation for beach access during the event under such a scenario. Under such a scenario, Commission Staff believe that it is unlikely that there would be a large number of persons who would access the affected beach area during the day and then attempt to stay and watch the fireworks show for free. Rather, the persons meandering along and/or recreating on Seacliff State Beach during the event would be expected to either: (1) offer a donation for a ticket; (2) pay for a ticket to enter the elevated paved area where the vast majority of the event will take place; (3) enjoy the public beach without paying a fee or donation and (a) go home before the evening fireworks event begins, or (b) stay for the show without paying. The number of persons staying for the fireworks without paying a fee would likely be but a handful. In any case, in light of the 30,000 persons expected, this small number of persons would be insignificant in relation to the overall event, and little price to pay to maintain continued public access on a State beach at the same time as allowing the event to take place.

The Applicant expressed a concern that such an option would make the event unmanageable in terms of checking the event area for paying versus non-paying event goers, particularly in light of the 30,000 people expected to attend. And while the number of persons "free-loading" on the fireworks show may be low this year, the Applicant expressed reservations that such a provision would undermine successful ticket sales for future events should it be widely understood that the fireworks could be viewed from the beach area for free.

The Commission is mindful of the nature of the event and the willingness shown on the Applicant's part to make modifications to better address Coastal Act access and recreation issues. There are multiple ways to modify the project so that the general public is not unduly prohibited from accessing the public beach here at the same time as providing the greatest probability for a successful and manageable event consistent with the goals and objectives of the Applicant. With this in mind, Commission Staff and the Applicant have negotiated appropriate revisions to the proposed event. Accordingly, the Commission can find the proposed project consistent with the applicable Coastal Act public access and recreation policies, and can approve a coastal permit for the event, if it is modified as follows:

1. The portion of the project located on the sandy beach shall be reduced to allow more of the State Beach to be available for general public access throughout the day. This can be accomplished by moving the upcoast perimeter of the project (proposed for Las Olas Drive) towards the Seacliff State Beach pier. If the project area perimeter is moved to the second stairway on the west of the pier, an additional roughly one-half mile of the beach unit will remain accessible to the non-fee paying public,

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<sup>7</sup> Issues raised by such a fee for entrance into this elevated paved area, an area outside of the Commission's original jurisdiction, would need to be addressed by State Parks and Santa Cruz County.



and the event can be condensed into a primary beach area where the main beach area structures (i.e., tents and stage) and related events are proposed. Since the State Beach is usually open from 6am to 10pm, this means that the public will only be excluded from this reduced beach project area for 9 of the 16 hours that the State Beach is typically open (i.e., from 1pm until 10pm on Saturday). The Applicant has indicated that such an arrangement would be acceptable. See Exhibit C for the approved project area.

2. The general public must be allowed through lateral access along the seaward side of the event for the majority of the day. This can be accomplished by establishing an access corridor along the water's edge through which the general public can access the beach and ocean from up and downcoast during the event without paying a fee. This access corridor would be a minimum of ten feet in width inland of water's edge. To minimize the psychological barrier to public access represented by fences, gates, and guards, the general public should be allowed to pass freely in this area without any interference or other encumbrance. The Applicant would be allowed to close the lateral accessway from 6pm until 10pm on Saturday to better control the event leading up to the fireworks show at 9pm. Since the State Beach is usually open from 6am to 10pm, this means that the public will enjoy lateral access for 12 of the available 16 hours that the State Beach is typically open. The Applicant has indicated that such an arrangement would be acceptable. See Exhibit C for the approved accessway.
3. The general public shall be made aware of the event and the event's public and fee-paying parameters. This can be accomplished by placing signs describing the event taking place, and explaining the fences and fees, at either end of the event (up and downcoast). In this way, it will be clear that the public is allowed free through access and will better understand the event taking place.
4. The safety zones proposed by the Applicant, within which both fee and non-fee persons are excluded, can be made part of the event as proposed. As indicated by the Applicant, these areas will include a 10-foot wide lateral corridor along the water's edge under the pier extending laterally approximately 350 feet through the safety zone surrounding the pier. With the beach access corridor kept open for the majority of the day (other than from 6pm until 10pm on Saturday), the public's ability to access along the beach is not unduly compromised.
5. To ensure that the beach area reverts to general public use as soon as possible after the event, all beach area fencing shall be rolled-up and stored adjacent to the beach bulkhead or off the beach following the fireworks display. The beach, pier, and water area must be cleaned of debris, including fireworks detritus, and the overall area returned to its pre-event condition by 10am on Sunday October 15, 2000.

See Special Conditions 1, 2, and 3.

By modifying the project in this way, the general beach-going public will not be unduly restricted in their use of Seacliff State Beach and will be provided through lateral access along the beach for the majority of the day of the event. The only exception is during the time period from 6pm until 10pm on Saturday when through lateral access would be blocked to the non-fee paying public. Such a closure would better allow the Applicant to control the event at the critical fireworks time and specifically ensure public safety when



fireworks are detonated. Such a public safety limitation is consistent with the applicable access policies. The Applicant has indicated that such an arrangement would be acceptable.

As conditioned, the Commission finds that the proposed project maximizes public access and recreation to the degree feasible; interferes to the least extent feasible with the public's right of access to and along the sea; provides lateral public access; protects lower cost visitor recreational facilities; protects the offshore water-oriented recreational area; and is compatible with the continuation of the beach park and recreation area; and, as such, is consistent with Coastal Act Sections 30210, 30211, 30212, 30213, 30220, and 30240(b). Therefore, the proposed project, as conditioned, is in conformity with the applicable public access and public recreation policies of Coastal Act Chapter 3.

## 2. Land Use Priorities

Coastal-dependent and coastal-related development are among the highest priority Coastal Act uses. Section 30001.5 states in part:

***Section 30001.5.** The Legislature further finds and declares that the basic goals of the state for the coastal zone are to: (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. ...(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners. (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. ...*

The Coastal Act requires that public recreational uses take precedence over private residential and general industrial or commercial development, but not at the expense of coastal-dependent industry:

***30220:** Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

***30221:** Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

***30223:** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30255 also provides:

***Section 30255.** Coastal-dependent developments shall have priority over other developments on or near the shoreline. ...*

The Coastal Act defines coastal-dependent and coastal-related as follows:



**Section 30101.** *"Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.*

**Section 30101.3.** *"Coastal-related development" means any use that is dependent on a coastal-dependent development or use.*

The Coastal Act establishes the beach and ocean recreational use of Seacliff State Beach as a coastal-dependent, priority use. The proposed event does not necessarily require a site on or near the shoreline to function and is not dependent upon another use that does. As such, the event is not coastal-dependent nor coastal-related and thus does not enjoy any sort of priority for siting on the beach. In fact, the proposed event could just as easily take place at an inland location better able to accommodate a fee-based event for 30,000 persons (for example, the Santa Cruz County Fairgrounds). To the extent that event-goers use the beach and ocean resources in combination with event activities, however, some amount of priority use is associated with the proposed event.

As detailed earlier, the proposed event would partially block the public's ability to make full use of this public recreational facility in order to allow a fee-based fireworks and fair event to take place here. To the extent that the event could be located inland, and to the extent the event blocks use of the beach-recreational area by the general public when this public beach recreational use *cannot* be accommodated at inland locations, the proposed event raises questions of consistency with the land use priorities of the Coastal Act.

Fortunately, there are complementary Coastal Act policies at play here (i.e., public access and recreation, and priority uses) that together dictate that the public beach and ocean be kept open for public use to the extent practicable. Although it could be argued that the entire beach area in question should be left open to the public for the duration of the event, the Commission finds that the public exclusion period is minimal and that the middle ground is appropriate in this instance to allow the Applicant better control over the fireworks portion of the event specifically to ensure public safety when fireworks are detonated (see above access and recreation finding). See Special Conditions 1, 2, and 3. In addition, the event may bring visitors to the coast who would not otherwise be attracted to Seacliff State Beach and the special coastal resources there. To the extent additional persons are made aware of – and enjoy – such coastal access and recreation areas, public access is maximized as directed by the Act.

As conditioned, the Commission finds that the proposed project will ensure continued recreational use of Seacliff State Beach to the extent feasible and is consistent with the Coastal Act land use priorities discussed in this finding.

### 3. LCP Consistency

The project is located on the beach partially within the jurisdiction of Santa Cruz County. The portion of the event taking place on the elevated day-use and campground area running the length of the backbeach is located within the coastal permitting jurisdiction of Santa Cruz County. The portion of the project located within the sandy beach area (including the pier) seaward of the bulkhead is located within the



Commission's retained coastal permit jurisdiction. The County determined that no permits were required for shutting down the State Park within their coastal permit jurisdiction. As such, and as discussed earlier, although the County's certified LCP can provide non-binding guidance, the standard of review for this coastal development permit application is the Coastal Act. In any case, the Commission generally tries to reconcile projects with an eye to maintaining consistency with certified LCP policies unless there is some compelling coastal resource reason not to do so.

The County's LCP land use (Existing Parks and Recreation) and zoning (PR – Parks, Recreation and Open Space) designations for the beach area protect this beach and back-beach area for recreational and open space use. LCP Land Use Plan Policy 2.22.1 establishes a hierarchy of uses whereby coastal recreational use has priority over the subject event; LUP Policy 2.22.2 prohibits the conversion of an existing priority use to a lesser priority use. Moreover, the LCP strongly protects this beach area from the intrusion of non-recreational structures and protects existing public access (for example LUP Policies 7.7.4, 7.7.10, 7.7.11, 7.7.12 and LCP Zoning Section 13.20.130). Monterey Bay and coastal water quality are specifically protected by LUP Policies 5.4 et seq.

The proposed project, as conditioned: allows the public to continue to access most of Seacliff State Beach for the majority of the event and, as such, is consistent with the goals, policies, and objectives of the County's certified LCP to the extent practicable for the beach area portion of the of the project.

#### 4. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

From what Commission staff understand, the County exempted the proposed project from CEQA. In any case, the Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.

